

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BRIAN KNIGHT,

Plaintiff,

v.

Civil Action No. 1:20CV254

CANDICE MCCLAUGHLIN,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 12]

On November 9, 2020, the Plaintiff, by counsel, filed a Complaint alleging one count of defamation against pro se Defendant Candice McLaughlin ("Defendant"). Compl., ECF No. 1. On December 14, 2020, Defendant filed "Motion to Dismiss for Lack of Personal Jurisdiction and Motion for Change of Venue and Motion for Extension of Time to File Responsive Pleading until Preliminary Matters are Resolved." ECF No. 7. Plaintiff filed a response in opposition to the Motion. ECF No. 10.

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On March 16, 2021, the Magistrate Judge entered a Report and Recommendation ("R&R") [ECF No. 12], recommending that the Court grant in part and deny in part the Motion to Dismiss [ECF No. 7].

The R&R also informed the parties regarding their right to file specific written objections to the magistrate judge's report

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and recommendation. Specifically, the magistrate judge gave the parties fourteen (14) calendar days after being served with a copy of the magistrate judge's recommended disposition to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." The R&R further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." The docket reflects that the R&R was sent to the Defendant by certified mail, return receipt requested. ECF Nos. 12, 13. The envelope was returned marked as "return to sender, vacant, unable to forward" on March 30, 2021. ECF No. 13. To date, no objections to the R&R have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

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Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 12]. The Motion to Dismiss is **GRANTED in part and DENIED in part** [ECF No. 7]. The Court **FINDS** that (1) this District Court has personal jurisdiction over the Defendant, and **DENIES in part** the Motion as to that ground; (2) venue is proper in the Northern District of West Virginia, and **DENIES in part** the Motion as to that ground; and (3) additional time on behalf of the Defendant is needed to file a responsive pleading, and **GRANTS in part** the Motion as to that ground, scheduling Defendant's deadline to file a responsive pleading **on or before 5:00 p.m. on May 17, 2021**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via electronic means and to the pro se Plaintiff via certified mail, return receipt requested.

DATED: April 26, 2021

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE